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(On Firm Letterhead)

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To: Wendy Burke

From: Andrew Washington

Date: July 25, 2023

Re: In re Marriage of Burke

Dear Wendy,

We have prepared the following letter for your reference which states our brief recommendation and also addresses and resolves other issues.

Brief Statement of Recommendation:

You had requested our recommendation in regards to whether is it advisable for you to accept Harlan's counsel's offer. Our recommendation is that you accept the offer and we enter into the joint stipulation whereby you will effectively receive \$50 million. Based on our research and factoring in a case study, of in Re Marriage of Rand, the Columbia Court of Appeal has held that substantial justice between the spouses does not require the court to evenly divide the entire increase in value, during marriage, of one spouse's separate property. Instead, it requires the court to evenly divide only the portion of the increase principally due to community efforts.

Other Issues:

**1. Whether Harlan's DigitalAudio shares community property or separate property**

Separate Property

In re Marriage of Rand, the Columbia Court of Appeal held that Charles's RIC shares were his separate property citing section 2550 of Columbian Family Code, that property that either spouse acquired before marriage belongs to that spouse-it is his or her property. Likewise, the proceeds of property that either spouse acquires before marriage also belong to that spouse-the proceeds are also his or her separate property-even if he or she acquires the proceeds during marriage. At dissolution, separate property is confirmed in its entirety to the owning spouse. Charles' shares were acquired before marriage and thus were separate property.

Community Property

Moreover, property that either spouse acquires during marriage belong to the martial community, and is community property, citing section 760 of Columbia Family Code.

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Here, in our case, Harlan founded DigitalAudio before marriage and received 50 percent shares of its stock. Thus, 50 percent of the company's stock is Harlan's separate property and will remain so during and after the dissolution of marriage.

**2. Whether the community devote more than minimal effort involving Harlan's DigitalAudio shares during marriage so as to aquire an interest in any increase in value, during marriage, of the shares resulting in community property. At dissolution, community property is awarded to each spouse in an equal 50 percent share.**

The Columbia court of Appeal in re Marriage of Rand held that because marriage is an egalitarian partnership, whenever the community devotes more than minimal effort involving a spouse's separate property during marriage, the community acquires an interest in any increase in value, during marriage, of the separate property, and the interest is community property. The court further contends that in dividing property dissolution, the family court must apportion the increase in value, during marriage, of one spouse's separate property whenever the community devotes more than minimal effort involving the separate property during marriage.

The Court further commented that the community devoted more than minimal effort involving Charles' shares during marriage through Charles's hard work for the business between marriage and seperation, although there is no indication that Linda worked for the business, however, that fact is inconsequential. The community acts whenever either of the spouse acts.

Here, in our case, during (Ms. Burke) your direct examination, you responded that you worked for the Mr. Burke's company during early days of the company. Further, you also took care of the kids when Mr. Burke was busy establishing the company. Thus, you were not able to give time to yourself for your further development and attaining a degree. Further, even after separation you amicably took care of the kids. Thus, you (Ms. Burke) can establish that your time as a community was devoted more than minimal efforts and thus, the profits and shares acquired during the time between marriage and separation can be community property.

However, this can be rebutted by Mr. Burke's counsel based on Mr. Burke's testimony where he responded that you did not work at the company. Moreover, his partner, Ms. Gardner has not testified to the effect that you worked at the company. However, it is evident that you took care of the kids which let Mr. Burke work harder at the company raising the revue and only minimal efforts are required from the community for the property to attain the shares of the property.

**3. The family court apportionment of the \$200 million increase in value, during marriage, of Harlan's DigitalAudio shares.**

To address this issue, if we follow the Columbia Court of Appeal in Re Marriage of Rand, the court's approach to apportionment under Pereira is to apply the increase in value, during marriage, of one spouse's seperate property is principally due to community effort, i.e. such efforts are predominant cause of the increase, the approach requires family court to apportion the increase in value mainly to the community estate (with remainder to owning spouse's separate property).

Another approach to apportionment, under Van Camp, applies when the increase in value, during the marriage, of one spouse's separate property is principally due to factors other than community effort, then family court should apportion increase in value to estate of owning

spouse with remainder to community property. The court must divide the property in such a way as to achieve substantial justice between spouse.

Here, Pamela Gardner, in her testimony testified that Mr. Burke particularly worked on SoundAudio whose marketable life was over in earlier 2009. 2009 is when Mr. Burke and Wendy separated. The shares of the company were 200 million.

In sum, we recommend you take the offer as proposed by Mr. Burke's counsel. Please do hesitate to reach out if you require further assistance in this matter.

Respectfully,

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Andrew Washington

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